In the United States Court of Appeals for the Ninth Circuit

No. 12602

B. M. CRENSHAW, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

BRIEF OF APPELLEE

ED DUPREE,
General Counsel.
LEON J. LIBEU,
Assistant General Counsel.
FRANCIS X. RILEY,
Special Litigation Attorney,
Office of the Housing Expediter,
Washington 25, D. C.

INDEX

	Page
Statement of Jurisdiction	1
Statement of the case	1
Argument:	
I. The Housing and Rent Act of 1947 as amended is constitutional	4
II. Consideration of appellant's court arguments	6
Conclusion	7

TABLE OF AUTHORITIES

Cases:	
Bowles v. *Willingham*, 321 U. S. 503	5
Crenshaw v. *Woods*, No. 12601 (C. A. 9th)	2
Woods v. *Durr*, 176 F. 2d 273 (C. A. 3d)	5
Woods v. *Miller Co.*, 333 U. S. 138	5
United States v. *Shoreline Cooperative Apartments, Inc. et al.*, 84 F. Supp. 660	2, 4
United States v. *Shoreline Cooperative Apts., Inc., et al.*, 338 U. S. 897	4
Statutes:	
Housing and Rent Act of 1947, as amended (50 U.S.C.A. 1881 et seq.):	
Section 204 (j) (1)	9
Section 204 (j) (2)	9
Section 204 (j) (3)	10
Section 206(a)	8
Section 206(b)	8
Section 209	10
Section 303	5
Emergency Price Control Act of 1942, as amended (50 U.S.C.A. 901 et seq.), Sec. 2(d)	10

In the United States Court of Appeals for the Ninth Circuit

No. 12602

B. M. CRENSHAW, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

This is an appeal by B. M. Crenshaw, defendant below, from a final judgment, entered February 21, 1950, ordering restitution for rent overcharges, pursuant to Sections 206(a) and 206(b) of the Housing and Rent Act of 1947, as amended (50 U.S.C.A. 1881 et seq.) (R. 17).[1] Notice of appeal was filed April 21, 1950. (R. 19).

STATEMENT OF THE CASE

In its complaint, filed July 21, 1949, the United States alleged that the defendant had violated the Act of 1947 by collecting rents in excess of the legally established

[1] The text of these sections appears, *infra*, p. 8.

maxima, as specifically set forth in Schedule A (Par. *IV & V,* R. 3),[2] in the operation of a controlled housing accommodation in Bozeman, Montana. The complaint prayed for restitution[3] and treble damages (R. 4).

The defendant's answer pleaded a general denial (Par. II, R. 7), and the unconstitutionality of the Act, because it "is repugnant to the due process clause of the Fifth Amendment of the Federal Constitution", (Par. III, R. 7). The case came on for trial on September 26 and 28, 1949, before the Hon. W. D. Murray (D.J.) without a jury (R. 24). At the outset the defendant moved to dismiss the complaint, on the ground that Sections 204(j)(1), (2) and (3) were unconstitutional delegations of power, and cited *United States* v. *Shoreline Cooperative Apts., et al.,* 84 F. Supp. 660, as authority for the motion (R. 25). The Court denied the motion (R. 35).

Prior to taking testimony the parties stipulated that "the evidence that has been given in the other case concerning identical issues that are raised in this case, * * * [will] be considered as going to the issues in

---

[2] Schedule A reads as follows:

SCHEDULE "A"

Landlord—B. M. Crenshaw — Premises—6 West Babcock Bozeman, Montana

Unit	Tenant	Period	Chg per Mo.	Max. per Mo.	Overcharge
Apt. #7	C. A. Labbe	5-1-49/6-30-49—2 Mos.	$65.00	$42.50	$45.00
Apt. #8	W. H. Westfall	5-1-49/6-30-49—2 Mos.	75.00	50.00	50.00
Apt. #9	R. G. Martin	12-1-48/6-30-49—7 Mos.	75.00	50.00	175.00
Apt. #14	L. W. Konecki	7-1-48/6-30-49—12 Mos.	75.00	50.00	300.00
Apt. #20	V. Cameron	5-2-49/6-2-49—1 Mo.	75.00	50.00	25.00
Apt. #21	Kathay Davis	6-1-48/through June 1949—13 Mos.	75.00	50.00	325.00
Apt. #30	L. S. Mann	April 1949—1 Mo.	55.00	18.00	37.00
Apt. #24	(L. Reeves (L. Ketterer	July 1-48/June 30-49—12 Mos.	75.00	65.00	120.00
Apt. #17	R. H. Henke	July 1-48/June 30-49—12 Mos.	55.00	40.00	180.00
		Total			$1,257.00

[3] The plaintiff had a suit pending asking for an injunction against defendant for violations of said act (see *Crenshaw* v. *Woods,* No. 12601 (C.A. 9th)).

this case" (R. 39). An additional Apartment No. 7, was included in this case (R. 39), and the record shows the maximum rent on that apartment was established by order at $42.50 (R. 100), dated January 4, 1947 (No. 3, R. 10).

The defendant was called as an adverse witness (R. 42), who admitted collecting more than the maximum rent [4] on Apartment 7 (R. 43), on Apartment 8 (R. 43), on Apartment 9 (R. 44), on Apartment 21 (R. 45), on Apartment 24 (R. 46) and Apartment 17 (R. 46). He then testified that he had settled the overcharges (R. 47), but interrogation by the Court revealed that no payment had been made, the receipts were merely evidence that the tenants were "satisfied" (R. 50).

At the conclusion of the trial the Court entered Findings of Fact and Conclusions of Law (R. 9-16). The Findings were made as to the occupant of each apartment, the duration of occupancy, the amount collected, and the maximum rent (Nos. 2-17, R. 10-13); further that, the defendant was "the landlord and operator" of the apartment (No. 1, R. 10); that the rents had not been changed since the issuance of the orders referred to in the Findings (No. 18, R. 13); and that the tenants have not sued on these overcharges (No. 19, R. 13).

As Conclusions of Law the Court held, it had jurisdiction (No. 1, R. 14), the Act is constitutional regardless of 204(j) because of the Separability clause [5] (No. 2, R. 14), the defendant has not exhausted his admin-

---

[4] The admissions were to collecting specified sums. But the maxima had been stipulated, therefore, these amounts were obviously overcharges, where the amounts were in excess of the maxima.

[5] *Infra*, p. 5.

istrative remedies, therefore, the orders are valid (No. 3, R. 14); and the amounts of overcharge on each apartment are set forth. (No. 5-11, R. 14-16).

Based on these Findings and Conclusions, the Court below entered a judgment of restitution to specified persons in the total sums of $1262.50 (R. 17). From that judgment defendant appeals (R. 19).

ARGUMENT

I

The Housing and Rent Act of 1947 as Amended Is Constitutional

Little time need be spent in this brief in arguing the constitutionality of sections 204 (j) (1), (2), and (3). Although the appellant places the gravamen of his appeal on the constitutionality of that section (Br. 6), the question has already been determined by the Supreme Court. The late Judge Shaw, sitting in the Northern District of Illinois, ruled that the Housing and Rent Act of 1947, as amended, was unconstitutional because of an unlawful delegation of authority in the said section and because it was not severable from the remainder of the Act, *United States* v. *Shoreline Cooperative Apartments, Inc., et al.,* 84 F. Supp. 660. The Supreme Court reversed that decision and held section 204 (j) constitutional on the authority of *Woods* v. *Miller Co.,* 333 U. S. 138. *United States* v. *Shoreline Cooperative Apartments, Inc., et* al., 338 U. S. 897, 70 S. Ct. 248, rehearing denied January 9, 1950.[6]

While the *Shoreline* case was pending, the respondents therein expanded their brief to cover all phases of

[6] This case was No. 334, October term of 1949 United States Supreme Court. Copies of the Petitioner's Brief and Reply Brief setting forth these points in full, will be made available to this Court at the time of oral argument.

constitutionality including an attack upon section 209 of the Act and also an attack upon the validity of said Act because of a want of due process.[7] The Supreme Court had briefed for it and orally argued before it the following constitutional questions: The validity of section 204 (j) (1), (2), and (3) and section 209;[8] separability;[9] the War Power; delegation to the Housing Expediter; due process; reasonable rate of compensation; alleged absence of judicial review; use of confidential information; and alleged arbitrary classification.

In deciding that the Act of 1947 (61 Stat. 93) was constitutional, the Supreme Court in *Woods* v. *Miller Co.*, 333 U. S. 138, held that under the present Act "the powers thus delegated are far less extensive than those sustained in *Bowles* v. *Willingham*, 321 U. S. 503 at pages 512-515" (333 U. S. at page 144).[10] The general question of constitutionality and specifically sections 204 (j) and 209 were passed upon by the Supreme Court as stated above in *United States* v. *Shorcline Cooperative Apartments, Inc., supra.* Furthermore, the Court of Appeals for the Third Circuit in *Woods* v. *Durr*, 176 F. 2d 273, held that section 209 was valid on the authority of *Bowles* v. *Willingham, supra,* and *Woods* v. *Miller Co., supra.*

---

[7] The question of the validity of section 209 was not presented in the Court below and therefore, is not properly before this Court.

[8] The text of Section 209 appears *infra*, p. 10.

[9] Section 303 of the Act provides as follows:

> Sec. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

[10] Section 2(d) of Act of 1942, is set forth in full, *infra*, p. 10.

It is respectfully submitted that since these questions have been specifically passed upon by the Supreme Court no constructive purpose would be served by a prolonged argument in this Court respecting them.

II

Consideration of Appellant's Arguments

In his list of arguments on page 8 of his brief appellant argues the insufficiency of the evidence (Par. *IV*); the invalidity of the orders on the basis of failure to give notice (Par. *V*); and, the failure of the court to give credit for extra services (Par. *VI*). It would be unduly burdensome to reargue these questions. All three arguments have been made in the appellee's brief in *Crenshaw* v. *Woods,* No. 12601, heretofore filed in this Court. The question of insufficiency of the evidence is argued, pages 12-16; failure to give notice is argued, pages 7-11; and, failure to give credit for extra services is argued, pages 18-23; and that the Court below found appellant had not exhausted his administrative remedy. It therefore, follows that this Court does not have jurisdiction to consider the validity of the orders as is discussed in the brief at pages 6-11. The appellee herewith adopts those arguments as presented in this Honorable Court.

CONCLUSION

It is respectfully submitted that the questions raised by appellant are clearly without merit and the judgment of the Court below should be affirmed.

ED DUPREE,
General Counsel;

LEON J. LIBEU,
Assistant General Counsel;

FRANCIS X. RILEY,
Special Litigation Attorney,
Office of the Housing Expediter,
Washington 25, D. C.

APPENDIX

Applicable Provisions of the Housing and Rent Act of 1947, as Amended, 50 USCA 1881 et seq.

Sec. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 204 (j)

(1) Whenever the governor of any State advises the Housing Expediter that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents, or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control, with respect to housing accommodations within defense-rental areas in such State and of the date on which such State rent control will become effective, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under

this Act, as amended, with respect to housing accommodations within such State shall be terminated as of the date on which State rent control is to become effective. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this act, as amended, with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village: *Provided, however,* That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further,* That where a major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

Section 209 of the 1949 Act:

> "Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act."

Emergency Price Control Act of 1942, as amended, 50 USCA 901 et seq., Section 2(d):

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which, in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act."

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 917531 348